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ABSTRACT

This pamphlet, through questions and answers, provides information on the requirements of the Education for All Handicapped Children Act, referred to as P.L. 94-142. States receiving funds under this legislation must follow specific procedures for providing handicapped children a "free appropriate public education in the most appropriate least restrictive environment." The purpose of this pamphlet is to acquaint the reader with federal requirements only. Both state and local education agencies may have additional regulations related to the education of handicapped children. (Author)

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A GUIDE TO UNDERSTANDING THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT (P.L. 94-142)

QUESTIONS AND ANSWERS ON THE FEDERAL LAW AND REGULATIONS

BY MARILYN RAUTH

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QUESTIONS AND ANSWERS
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FEDERAL LAW AND REGULATIONS

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This pamphlet, through questions and answers, provides information on the requirements of the Education for all Handicapped Children Act, referred to as P.L. 94-142. States receiving funds under this legislation must follow specific procedures for providing handicapped children a "free appropriate public education in the most appropriate least restrictive environment." The law has a far-reaching impact on all educators, whether teachers, counselors, paraprofessionals or other support personnel. The purpose of this pamphlet is to acquaint the reader with federal requirements only. Both state and local education agencies may have additional regulations related to the education of handicapped children.

Please note the use of several terms in this booklet. State education agency refers to a state department of education and local education agency refers to a local school system. In cases where only a "public agency" is cited, this may be a state education agency, a local school system, an intermediate education unit, a hospital, or any other political subdivision of the state responsible for providing education to handicapped children.

LEGISLATIVE INTENT

Q. Is P.L. 94-142 a civil rights law?

A. No, the civil rights of physically and mentally handicapped persons are guaranteed by separate legislation, Section 504 of the Rehabilitation Act of 1973. The primary objective of Section 504 is to assure handicapped persons access to jobs and services, free of discrimination. Sections applicable to preschool, elementary and secondary education require school systems to provide handicapped persons with a "free appropriate education," educate handicapped students with non-handicapped students to the maximum extent appropriate, eliminate evaluation procedures which result in misclassification, and establish procedural safeguards to allow parents or guardians to express opinions on evaluation and placement of their children. Section 504 deals with several subjects not covered in P.L. 94-142, such as barrier-free facilities and program accessibility; employment; postsecondary education; and health, welfare and social services.

Q. What is the purpose of P.L. 94-142?

A. Section 504 of the Rehabilitation Act, described above, provides no funds to carry out its mandate. P.L. 94-142, signed into law on November 29, 1975, is the new Part B of the larger Education of the Handicapped Act passed in July, 1971. P.L. 94-142 provides assistance to states for education of handicapped children. Under this law, if a state submits an annual plan (to the Bureau of Education for the Handicapped in the U.S. Office of Education) which conforms to procedures outlined in P.L. 94-142, it can receive federal funds to supplement education of handicapped children. P.L. 94-142, therefore, is essentially enabling legislation which provides funds and procedures for states to meet their responsibilities in educating the handicapped.

Q. What agencies are responsible for enforcing these laws?

A. The Office for Civil Rights enforces Sec. 504 of the Rehabilitation Act and the Bureau of Education for the Handicapped has enforcement responsibility for P.L. 94-142. Both agencies are within the U.S. Department of Health, Education and Welfare. Sec. 504 applies to all recipients of federal funds, whereas P.L. 94-142 applies only to states submitting plans and receiving funds under the latter Act. As of January, 1978, all states but New Mexico had submitted plans under P.L. 94-142.

Q. How and when does P.L. 94-142 take effect?

A. The law took effect October 1, 1977. Although its provisions apply as of this date to all presently identified handicapped students, each state's annual program plan must include assurances that steps have or will be taken to make a free appropriate public education available for all handicapped children age 3 through 18 not later than September 1, 1978 and for all handicapped children age 3 through 21 not later than September 1, 1980. Priorities in the use of federal funds are: first, the identification, location, evaluation and provision of special education and related services to handicapped children not receiving any education; second, providing the same to handicapped children within each disability with the most severe handicaps who are receiving an inadequate education; and third, to meet the other requirements of the Act.

Q. Is our school system required to provide education to handicapped students in the 3- through 5-year-old and 18- through 21-year-old ranges if we do not offer education to non-handicapped students of these ages?

A. No, these are exceptions. The provision of public education to the 3 through 5 and 18 through 21 handicapped age group population does not apply to a state to the extent the requirement would be inconsistent with state law or practice or any court order. If, for example, your state or local school system offered educational services to 4- and 5-year-old non-handicapped children, an appropriate education must also be made available for handicapped children of these ages. Public education for three-year-olds would not be required since it is not offered to non-handicapped children of this age.

Q. What is the difference between the free appropriate public education and the "full educational opportunity goal" required by P.L. 94-142?

A. Each state receiving funds under P.L. 94-142 is required to provide each handicapped child, in the age groups discussed previously, a free appropriate public education. *Free appropriate public education* means special education and related services provided at the preschool, elementary or secondary education level. These must be at public expense and under public supervision and must meet standards of the state educational agency. Under P.L. 94-142, each handicapped child requiring special education must have an individualized education program as evidence that he or she is receiving a free appropriate education.

In addition, each state must include in its annual state plan a *full educational opportunity goal* for handicapped children from birth through age 21. The states must provide data on the number of handicapped children in this age range, the types of disabilities, and the kind and number of facilities, personnel and services necessary to meet the full educational opportunity goal for this inclusive age range. States must demonstrate that services to children in these extended age ranges are a goal they are working toward,

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but they are not actually required to offer them under this Act.

Q. In the phrase "special education and related services," what is meant by related services?

A. Federal regulations define related services as transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. These services must be provided at public expense where needed.

Q. How is handicapped defined in this Act?

A. Handicapped children means those evaluated as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of these impairments need special education and related services. Each is specifically defined in the federal regulations in Section 121a.5.

Q. How does the law define specific learning disabilities?

A. Because of the controversy generated over definition of this category, the final regulations for P.L. 94-142 allowed no more than two percent of all children aged five through 17 in a state to be so identified for federal funding purposes. In new supplementary regulations for evaluating specific learning disabilities (*Federal Register*, December 29, 1977), this two percent cap was lifted, and this type of disability is to be determined on the basis of whether a child does not achieve commensurate with his or her age and ability when provided with appropriate educational experiences and whether the child has a severe discrepancy between achievement and intellectual ability in one or more of seven areas relating to communication skills and mathematical abilities. This discrepancy must not primarily be the result of 1) visual, hearing or motor handicaps, 2) mental retardation, 3) emotional disturbance or 4) environmental, cultural or economic disadvantage. Rather, severe discrepancy between achievement and intellectual ability must be found in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation or mathematics reasoning. These supplemental regulations on specific learning disabilities should become effective sometime during February, 1978.

PARENTS' RIGHTS AND DUE PROCESS

Q. What are parents' rights under this law?

A. Parent means a parent, guardian, or surrogate parent appointed to act on behalf of a child. This includes persons acting in place of a parent, such as a grandmother or step-parent with whom a child lives.

Parents of handicapped children must be notified in writing before a public agency initiates, changes or refuses to initiate or change the *identification, evaluation or placement of the child or the provision of a free appropriate public education* to the child. This notification in the parents' native language or other mode of communication (e.g. braille, oral communication, sign language) must include:

1) a full explanation of parents' due process rights;

2) a description of the action proposed or refused by the agency, why the agency proposes or refuses to take this action, and a description of any options considered by the agency and reasons they were rejected;

3) a description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refusal; and

4) any other factors relevant to the agency's proposal or refusal.

Q. When is parental consent absolutely required?

A. Parental consent is mandatory only before conducting a preplacement evaluation or initial placement of a handicapped child in a program providing special education and related services. Many implementors are not aware that any changes in a child's special education program after the initial placement are not subject to parental consent, though requirements of the individualized education program and prior notice must be met. Parents may present complaints or grievances through the due process procedure at any time, however.

Q. What happens if parents refuse to give their consent when required?

A. State procedures govern the public agency in overriding a parent's refusal to consent in those states where such consent is required by state law. Where there is no state law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the agency may use due process hearing procedures established in P.L. 94-142. If the hearing or review officer upholds the agency, the agency may proceed without parental consent.

Q. Once parental consent has been given, can it be revoked?

A. Yes. Parental consent is voluntary and may be revoked at any time.

Q. When may the impartial due process hearing procedure established under P.L. 94-142 be used?

A. Proposals or refusals to initiate or change the identification, evaluation, or educational placement of a handicapped child or provision of a free appropriate public education are subject to the hearing process which may be initiated either by *a parent or a public education agency.*

Q. May mediation be used instead?

A. Yes, if both parties agree to try it instead of the due process hearings.

Q. Can anyone be selected as a hearing officer at the due process hearings?

A. No. Such hearings may not be conducted by an employee of a public agency involved in the education or care of the child or by anyone having a personal or professional interest which could conflict with his or her objectivity in the case.

Q. What rights do parties to these hearings have?

A. Both the parents and the public agency have the right to:

1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

2) present evidence, and confront, cross-examine and compel attendance of witnesses;

3) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

4) obtain a written or electronic verbatim record of the hearing;

5) obtain written findings of facts and decisions;

6) parents involved in hearings also have the right to have the child who is the subject of the hearing present and to open the hearing to the public.

Q. Who conducts these impartial due process hearings?

A. The state education agency or the public agency directly responsible for the child's education (e.g., the local school system), as determined under state statute, regulation or written policy of the state education agency.

Q. Must the public agency provide or pay for legal counsel for parents at due process hearings?

A. No. It must, however, inform the parent of any free or low-cost legal and other relevant services available in the area.

Q. Is a decision made at a due process hearing final?

A. Yes, but with some exceptions. If the hearing is originally conducted by a public agency other than the state education agency, either party who disagrees with the findings and decision may appeal to the state education agency. The decision made by the reviewing officer at the state level would then be final unless a party pursued civil action in the courts.

Q. If an appeal is conducted at the state level, for what is the state education agency's hearing review official responsible?

A. This official must:

1) examine the entire hearing record;

2) insure that procedures were consistent with due process rights;

3) seek additional evidence, if necessary;

4) give the parties an opportunity for oral or written argument, or both, at the hearing officer's discretion;

5) make an independent decision on completion of review; and

6) give a copy of written findings and the decision to the parties.

Q. Do parties still have the right to counsel at the state administrative level review?

A. Yes.

Q. In the due process procedure, may any agency other than the state education agency conduct a state level review?

A. Yes, if the state education agency does not choose to conduct the review directly, another state agency may conduct it on behalf of the state education agency. The state education agency remains responsible for the final decision on review, however.

Q. Must the state education agency meet certain timelines in state level review hearings?

A. Yes. It must see that within 30 days after receipt of a request for a review:

1) a final decision is reached in the review;

2) a copy of the decision is mailed to each of the parties.

At the request of either party, the hearing officer may grant a specific extension of time beyond the normal 30 days. Each hearing and each review involving oral arguments must be conducted at a time and place mutually convenient to the parents and child involved.

Q. Are there any time limits on public agencies conducting other than state level review hearings?

A. Yes. Public agencies, such as the local school system, conducting initial hearings under the due process procedure must see that a final decision is reached and that copies of the final decision are mailed to each party not later than 45 days after receipt of a request for a hearing.

Q. How is a child's educational placement affected during due process proceedings?
A. A child's placement is not to be changed during any administrative or judicial proceeding regarding a complaint, unless the parent and agency involved agree otherwise. This does not, however, prevent an agency from using its normal procedures for dealing with children who are endangering themselves or others.

Q. Do parents have the right to independent educational evaluation of their handicapped child?
A. Yes. Each public agency must provide to parents, upon request, information on where an independent educational evaluation may be obtained. The parent has the right to such an evaluation at public expense whenever the parent disagrees with the evaluation obtained by the public agency. The public agency must either pay for the independent evaluation or see that it is provided at no cost to the parent.

Q. Is there any case in which a parent would be denied an independent evaluation at public expense?
A. Yes. If the public agency initiated a due process hearing on its evaluation which was then shown to be appropriate, the parent would still have the right to an independent evaluation, but not at public expense.

Q. Can parent-initiated evaluations at parents' own expense be considered in determining a child's educational program?
A. Yes. If a parent obtains an independent educational evaluation at private expense, it must be considered by the public agency in any decision made regarding provision of a free appropriate public education to the child or may be used as evidence at a due process hearing. Evaluation criteria, however, must meet the state education agency's standards.

Q. May parents inspect and review all education records of their child?
A. Yes. They may inspect and review all education records with respect to the identification, evaluation and placement of the child and the provision of a free appropriate public education.

PRIVATE AGENCIES AND INSTITUTIONS

Q. Are states responsible for the identification, location and evaluation of all handicapped children in the age group population covered under this law, whether in public or private agencies or institutions in the state?
A. Yes. This data must be included in each state's annual program plan. States must see that eligible students receive a free appropriate public education. This is done through public agencies or institutions where appropriate services are available. In cases where such services are not available, a child may be placed at public expense in a private agency or institution which can meet the child's special needs. The state and/or local education agencies retain responsibility for assuring that these children's rights are protected under P.L. 94-142.

Q. Does placement of students in private schools at public expense raise constitutional questions about federal or other public monies going to private institutions?
A. Yes. This is a dilemma it will likely take some time to resolve.

INDIVIDUALIZED EDUCATION PROGRAMS

Q. How does P.L. 94-142 define an individualized education program (IEP)?
A. An IEP is a written statement which includes 1) the child's present levels of educational preformance; 2) annual goals, including short-term instructional objectives; 3) specific special education and related services to be provided to the child and the extent to which the child will be able to participate in regular educational programs; 4) projected dates for initiation and anticipated duration of special services; and 5) objective criteria and evaluation procedures and schedules for determining on at least an annual basis whether the short-term instructional objectives are being met.

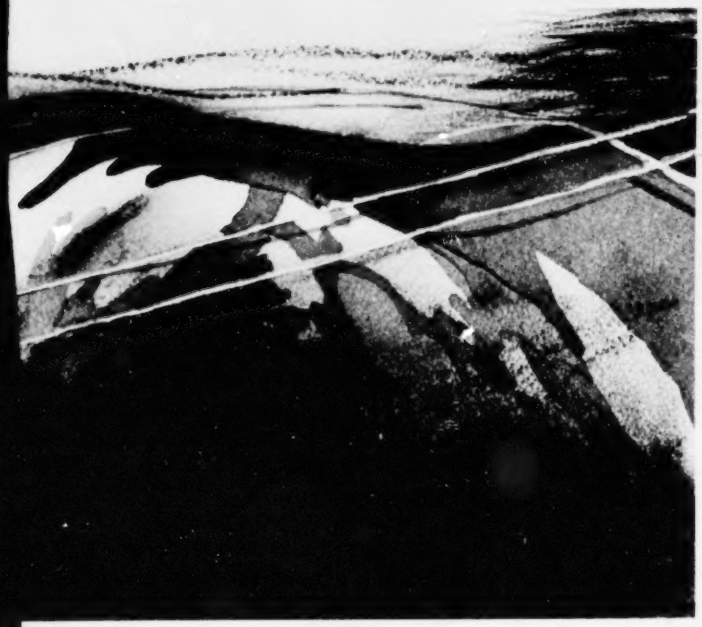
Q. How is an IEP to be developed?
A. Federal regulations require that a representative of the public agency, other than the child's teacher, qual-

ified to provide or supervise the provision of special education; the child's teacher; one or both of the child's parents; and the child, where appropriate, be involved in developing a handicapped child's IEP. They also allow for involvement of other individuals at the discretion of the parent or agency.

Q. Must evaluation personnel be included in the IEP meeting?
A. In cases where the handicapped child has been evaluated for the first time, either a member of the evaluation team or a person knowledgeable about the evaluation procedures used with the child and their results must be present. At other times, their participation will be at the discretion of the public agency.

Q. If placement is to be decided at the IEP meeting, how is it determined who the child's teacher should be for participation in this meeting?
A. Federal law and regulations are rather ambiguous on this question, offering only some examples of possibilities. Essentially it comes down to the public agency having the right to designate the participating teacher. It can be one or more regular or special education teachers, but it is suggested that either the teacher or representative of the school system should be qualified in the area of the child's suspected disability, where possible.

Q. When are IEP meetings to be held?
A. IEPs were first required to be completed for all identified handicapped children by October 1, 1977. Now they must be in effect at the beginning of each school year or within 30 calendar days of determination that a child needs special education and related services. Meetings can take place any time during the school year or the summer.



Q. Do federal law or regulations require education personnel to attend IEP planning meetings outside regular school hours?
A. It is required that these meetings be held at times and places mutually convenient to parents and educators, so it is possible that school personnel in some cases could be required to attend meetings outside regular school hours. Compensation and procedural guidelines for this extra duty are matters for local negotiations.

Q. Who is required to make contacts with parents for setting up the IEP meetings?
A. The public agency or school system is responsible for seeing that these contacts are made, but they may designate that responsibility to anyone. It could therefore be the responsibility of an administrator, counselor, teacher or any other employee. This again is a negotiable item.

Q. If the school system places a handicapped child in a parochial or other private school, who is responsible for the IEP?
A. The public school system must first initiate and develop the IEP for the child with a representative of the private school in attendance. It may then at its discretion allow the private school to conduct review and revision of the IEP assuring that a public school system representative and parents are involved. Responsibility remains with the public agency.

Q. What is to be done if parents refuse to attend IEP meetings?
A. IEP meetings can be held without parents present if detailed documentation exists that parents were notified of all their rights and of the meeting within a reasonable time prior to the event and that additional efforts to contact parents, such as telephone calls, visits to the parent's home or workplace, were unproductive.

Q. Is any agency, teacher or other person accountable if a child does not achieve the growth projected in the IEP's annual goals and objectives?
A. No, the IEP is not a binding contract. School systems and teachers are responsible, however, for seeing that good faith efforts are made to achieve the IEP's goals and objectives and for providing all services needed by a handicapped child. Although it is clear that accountability cannot be based on student achievement, this would not prevent parents from using the due process procedure or court action if they feel their child is not receiving an appropriate education.

Q. Must school systems provide all educational services needed by a handicapped child, regardless of availability?

A. In the final regulations, the phrase "regardless of availability" was deleted, leading many to believe school systems were required to offer only those services available. A later interpretation by the Bureau of Education for the Handicapped stated, however, that the school system or other public agency would be responsible for providing all needed educational services, whether presently available or not. Until further action, this interpretation will stand.

Q. How detailed must IEP goal statements be according to federal law?
A. Federal law specifies only the general contents of an IEP. Annual goals and short-term instructional objectives must be included along with other IEP components, but the intent is not that the IEP be a long, complicated form.

Q. Who must sign the IEP?
A. Although many school systems require the signatures of parents, and sometimes teachers and other education personnel, federal law and regulations do not require any signature on the IEP. Parents must, however, be involved in the IEP planning meetings.

Q. Does federal law require that IEPs be developed for gifted students?
A. No, although some states encourage this practice.

Q. How often must an IEP be reviewed or reevaluated?
A. At least once annually by the IEP team. The team may also be reconvened at any time if substantial changes are required in the IEP.

EVALUATION

Q. When is evaluation of a handicapped child required?
A. Before any action is taken on initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted. Such an evaluation must occur at least once every three years, but it must also be conducted anytime requested by the parent or the education agency.

Q. Is parental consent required before evaluation takes place?
A. Parental consent is required only for the initial preplacement evaluation. If it is refused at this time, the school system may use the due process hearing procedure to challenge the parents' decision. If the hearing officer overrules the parents, evaluation may proceed without their consent. At all other times of evaluation, parents must be notified, but their consent is not required.

Q. What is considered to be a "full and individual evaluation" of the child's educational needs?
A. State and local education agencies must assure at a minimum that:

1) tests and other evaluation materials a) are in the child's native language or other mode of communication, unless clearly this is not feasible; b) are validated for the specific purpose used; and c) are administered by trained personnel according to instructions of the test producer;

2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a single general IQ;

3) when tests are used with a child with impaired sensory, manual or speaking skills, test results must accurately reflect the aptitude, achievement level or other factors being tested rather than simply the child's impaired skills;

4) no single procedure is used as the sole criterion for determining the child's educational program;

5) the evaluation is made by a multi-disciplinary team, including at least one teacher or specialist knowledgeable about the area of suspected disability;

6) the child is assessed in all areas related to the suspected disability, including, *where appropriate,* health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

LEAST RESTRICTIVE ENVIRONMENT

Q. What is meant by the law's requirement that all children be placed in "the least restrictive environment?"
A. Each public agency or school system must assure that, to the maximum extent appropriate, handicapped children are educated with non-handicapped children and that special classes, separate schooling, or other removal from the regular educational environment occur only when the nature or severity of the handicap is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

Q. Does this mean there will be a dismantling of our special education program as we know it?
A. It should not. Although many more handicapped students than in the past will participate in regular education programs and less restrictive environments of some type, many will still need to be institutionalized or require homebound instruction or self-contained special education classrooms. In fact, school systems or other public agencies are to insure that a continuum of alternative placements is available to handicapped children including regular classes,

special classes, special schools, home instruction, and instruction in hospitals and institutions. Consideration is to be given in placement of a child to placing the child as close to home as possible.

Q. How often does a child's placement in the most appropriate, least restrictive environment need to be reviewed?
A. At least once a year during the review of the IEP.

Q. Are handicapped children required to be placed in least restrictive environments for nonacademic and extracurricular services and activities?
A. Yes, they are to participate in these activities with non-handicapped children to the maximum extent possible appropriate to their needs, regardless of their academic placement. This applies to meals, recess periods, athletics, transportation, counseling, health services, recreational activities, special interest groups or clubs, and employment of students. The public agency has responsibility for ensuring this participation whether the child is placed in a public or private school or institution. Particular emphasis is given to the right of each handicapped child to participate in regular or specially designed physical education programs.

Q. Is any consideration to be given to the effect placement of a handicapped child might have on other students in that environment?
A. Yes. In selecting the least restrictive environment, consideration is to be given to any harmful effect on the child or on the quality of services which he or she needs. The example is given in the regulations that where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment and regular placement would therefore be inappropriate.

TRAINING PROGRAMS FOR EDUCATIONAL PERSONNEL

Q. Who is responsible for insuring teachers and administrators in all public agencies are fully informed about their responsibilities concerning least restrictive environment placements and are provided with training and technical assistance necessary to assist them in this effort?
A. The state education agency (department).

Q. Does P.L. 94-142 require teacher training programs?
A. Yes, state education agencies must include in their annual state plans a comprehensive personnel development plan which includes provisions for inservice training, assurances of an adequate number of necessary qualified personnel, dissemination of educational research and demonstration projects and procedures for adopting promising educational practices and materials.

Q. How is inservice training defined for purposes of this Act?
A. Inservice training means any training other than that received in a full-time program which leads to a degree.

Q. How will a state determine what type of inservice training is needed?
A. The state education agency must conduct an annual needs assessment to determine the number of qualified personnel available as compared to the number actually needed. Each annual program plan submitted by a state must give a breakdown of the need for new personnel and for retrained personnel, based on the needs assessment.

Q. For what are state education agencies responsible in ongoing inservice training programs they are required to provide for personnel involved in education of handicapped children?
A. Based on its needs assessment, the state education agency must assure that ongoing inservice programs are available to all personnel who are engaged in the education of handicapped children. Such programs must include the use of incentives to insure participation by teachers, like options for academic credit, salary step credit, certification renewal, or updating professional skills. Local staff must be involved in developing the local inservice programs, and effective innovative practices are to be implemented.

The state education agency may provide inservice programs and/or enter into contracts with higher edu-

cation institutions, local education agencies, or other agencies, institutions or organizations (which may include parent, handicapped or other organizations) to carry out:

1) experimental or innovative personnel development programs;

2) development or modification of instructional materials; and

3) dissemination of significant information from educational research and development programs.

Local unions should be eligible to apply for these contracts.

STATE ADVISORY PANEL

Q. How does the required State Advisory Panel function under this law?

A. This body is to advise the state education agency of unmet needs in education of handicapped children in the state; comment publicly on the state's annual program plan, its proposed regulations regarding education of the handicapped, and its procedures for distributing funds under P.L. 94-142; and assist the state in reporting information and evaluations related to education of the handicapped.

Q. Who is to be on this state advisory panel?

A. The membership must be persons involved in or concerned with the education of handicapped children. It must include, but is not limited to, at least one person from each of the following groups:

1) handicapped individuals
2) teachers of handicapped children
3) parents of handicapped children
4) state and local educational officials
5) special education program administrators

Q. How are people appointed to this panel?

A. Members are appointed by the Governor or any other official authorized under state law to make such appointments.

Q. How often does this advisory panel meet?

A. It meets as often as necessary to conduct its business. Prior notice of meetings and agenda items must be given, and all meetings must be open to the public.

FUNDING

Q. How are states to be funded under this Act for provision of special education and related services to handicapped children?

A. The maximum allocation a state may receive in any fiscal year is equal to the number of handicapped children aged 3 through 21 in the state who are receiving special education and related services multiplied by the following applicable percentages of the average per pupil expenditure in U.S. public elementary and secondary schools:

1978— 5 percent
1979—10 percent
1980—20 percent
1981—30 percent
1982 and each fiscal year thereafter—40 percent

It should be remembered that these percentages are authorized amounts and that actual appropriations may be less.

Q. Shouldn't federal funding be based on higher percentages in the '70s when start-up costs are greatest?

A. The AFT and many other organizations are urging Congress to go immediately to the 40 percent funding level because of the tremendous financial burden this law places on the schools and other public agencies at a time when their resources are exceedingly scarce. HEW, on the other hand, is asking for less than the authorized amount in its 1979 education budget proposal. If this proposal were to be accepted, the federal funding formula would be based on 12 percent of the average per pupil expenditure in public elementary and secondary schools for the 1979-80 school year instead of the authorized 20 percent.

Q. Are there limitations on the use of federal funds received under P.L. 94-142?

A. Yes. There are, of course, only specific types of handicaps which qualify for services under this Act, as already discussed. In addition, the Act limits the number of handicapped children who may be counted for allocation purposes to 12 percent of the state's general school population aged 5 through 17. If a state found its actual percentage of identified handicapped children to be 15 percent of this general school population, it would be required to serve all these children,

but federal funding would stop at the 12 percent level. Also excluded from funding under this Act are children counted under Section 121 of the Elementary and Secondary Education Act of 1965 which provides funding for state-operated programs for handicapped children.

Q. How are funds to be divided between the state and local education agencies?
A. For fiscal year 1978, only 50 percent of federal funds allocated to a state may be used by the state in carrying out its responsibilities, with the other 50 percent being distributed among local education agencies. Starting with fiscal year 1979 and each year thereafter, the state may use only 25 percent of its allocated funds to support its duties and must distribute the other 75 percent among local education agencies.

Q. How will funding for each local or intermediate education agency (school system) be determined?
A. The local or intermediate education agency must compare the number of handicapped children aged 3 through 21 in that agency who are receiving special education and related services to the total number of handicapped children in this age range receiving such services in all education agencies applying to the state for funds. Funding will be determined on the resultant ratio.

Q. Will this funding pay for the entire educational program of any individual handicapped children?
A. Not in most cases. Not only will federal funding in many places be far short of the amount needed, but the local education agency may use funds under this Act only for *excess costs* of providing special education and related services for handicapped children. Under the excess costs requirement, a school system must, on the basis of a lengthy formula, compute a minimum amount it must spend, on the average, for the education of each of its handicapped students. Federal funds received under this act may be used only for costs over and above this computed minimum. There is no restriction on where funds are obtained to pay for the minimum amount except that it cannot be from allocations under P.L. 94-142. There generally may be no instance where funds under this law are used to pay for all costs directly attributable to the education of a handicapped child. The only exception will be that of some handicapped children aged 3, 4 or 5 (see final question on use of incentive grants).

Q. Could non-compliance with P.L. 94-142 jeopardize federal funding for state or local education agencies?
A. Yes. Non-compliance with P.L. 94-142 can eventually lead to the U.S. Commissioner of Education withholding all funds to a state under this Act, in addition to withholding funds under other federal programs providing assistance for the education of handicapped children. These would include Sec. 121, Sec. 305, and Title IV-C of the Elementary and Secondary Education Act of 1965 and Sec. 110(a) of the Vocational Education Act of 1963.

Q. I have heard that all federal funds can be withheld if states are not in compliance with P.L. 94-142. Is this incorrect?
A. With regard to P.L. 94-142, it is incorrect. Only the above mentioned funds related to education of the handicapped can be withheld for violations of this Act. However, the Commissioner could withhold all federal education funds to a state for non-compliance with Section 504 of the Rehabilitation Act of 1973. It is more than likely that if a state is not in compliance with P.L. 94-142, it also will not be in compliance with Section 504.

Q. Could a state continue to receive funds under P.L. 94-142 but have funds withheld for specific local or intermediate education agencies in violation of this law?
A. Yes, this could happen. Also, a state has the authority to cut off state funds to a school or school system not in compliance with these laws.

INCENTIVE GRANTS

Q. What are the special incentive grants?
A. Each state may apply for these special grants if serving handicapped children ages three, four or five. The state education agency may use these funds itself to provide services or contract with local education agencies, intermediate education units or other agencies.

Q. How are amounts of such grants determined?
A. The amount of a grant is $300 multiplied by the average number of children age three through five counted during the current school year. If appropriated funds are less than enough to pay these grants in full, the amount of each grant is ratably reduced.

Q. Can these grants be used to pay the full cost of education of handicapped children in these age ranges or only excess costs?
A. They may be used to pay for all costs directly attributable to education of handicapped children only if local or state funds are not available for education of non-handicapped children of the same age. If funds are available for non-handicapped children in any of these age groups, funds equal to that amount must be made available for handicapped children in the age groups served before the school system would be eligible for incentive grants.